

**ORDINANCE NO. 09-64**

ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AMENDING CHAPTER 98 ENTITLED "ZONING", ARTICLE VI. SUPPLEMENTARY DISTRICT REGULATIONS, DIVISION 5. USES, OF THE CODE OF ORDINANCES AND IN PARTICULAR, BY ADDING A NEW SUBDIVISION, SUBDIVISION XII. FAMILY DAY CARE HOMES, TO PROVIDE DEFINITIONS OF A FAMILY DAY CARE HOME AND A LARGE FAMILY CARE HOME THAT IS THE SAME DEFINITION UNDER STATE LAW, TO PROVIDE PERMITTED USE AND COMPLIANCE WITH RESIDENTIAL ZONING REGULATIONS AND COMPLIANCE WITH CITY FIRE CODE UPON PAYMENT OF AN INSPECTION FEE OF \$50.00; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR INCLUSION IN CODE; PROVIDING FOR A SEVERABILITY CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Planning and Zoning Board at its meeting of August 12, 2009 recommended approval of this ordinance; and

**WHEREAS**, the general purpose and intent of this ordinance is to provide proper zoning regulations in the best interest of the health, safety, welfare and aesthetics of the community and the proper administration of its government; and

**WHEREAS**, the specific intent and purpose of this ordinance is to provide limited regulations that are compatible with section 166.0445, Florida Statutes, where state law preempts municipalities from regulating family day care homes registered or licensed with the Florida Department of Children and Family Services insofar as the home owner or operator would be required to obtain a special exemption or use permit or waiver, or to pay a special fee in excess of \$50.00, to operate on property zoned for residential use.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** Chapter 98 entitled "Zoning", Article VI. Supplementary District Regulations, Division 5. Uses, of the Code of Ordinances of the City of Hialeah, Florida

is hereby amended, by the addition of a new subdivision, Subdivision XII. Family Day Care Homes, to read as follows:

**Chapter 98**

**ZONING**

\* \* \*

**ARTICLE VI. SUPPLEMENTARY DISTRICT REGULATIONS**

\* \* \*

Division 5. Uses

\* \* \*

*Subdivision XII. Family Day Care Homes*

**Sec. 98-2031. Definitions.**

The following words, terms and phrases, when used in this subdivision, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Family day care home means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (a) A maximum of four children from birth to 12 months of age.
- (b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (c) A maximum of six preschool children if all are

older than 12 months of age.

(d) A maximum of ten children if no more than five are preschool age and, of those five, no more than two are under 12 months of age.

Large family child care home means an occupied residence in which child care is regularly provided for children from a least two unrelated families, which receives a payment, fee or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation. One of the two full-time child care personnel must be the owner or occupant of the residence. A large family child care home must have first operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one year, before seeking licensure as a large family child care home. A large family child care home shall be allowed to provided care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

(a) A maximum of eight children from birth to 24 months of age.

(b) A maximum of 12 children, with no more than four children under 24 months of age.

**Sec. 98-2032. Permitted use.**

The operation of a residence as a family day care home or a large family child care home licensed or registered with the state department of children and family services shall constitute a valid residential use on property having a residential land use classification and a residential zoning district designation. A family day care home or a large family child care home shall comply with all zoning regulations of the residential zoning district designation. A family day care use or child care use shall not change the residential character of the home. Play areas shall be designed and located to reduce the impact of noise on surrounding properties.

**Sec. 98-2033. Compliance with fire code.**

A family day care home or large family child care home shall comply with the city fire code as adopted in section 38-31 hereof. A family day care home or large family child care home shall allow the city to inspect the premises, including the interior of the home, to determine compliance with the city fire code, upon payment of an inspection fee of \$50.00, which also includes the re-inspection if required. If the city determines that a family day care home or large family child care home complies with the city fire code, then the city shall issue a certificate of compliance that will be in effect for two years. The property owner or operator of a family day care home or large family child care home shall be responsible for recertifying compliance upon the expiration of the certificate of compliance.

\* \* \*

**Section 2: Repeal of Ordinances in Conflict.**

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

**Section 3: Penalties.**

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the City may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

**Section 4: Inclusion in Code.**

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Hialeah, as an addition or amendment thereto, and the sections of this ordinance shall be renumbered to conform to the uniform numbering system of the Code.

**Section 5: Severability Clause.**

If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

**Section 6: Effective Date.**

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 8<sup>th</sup> day of September, 2009.

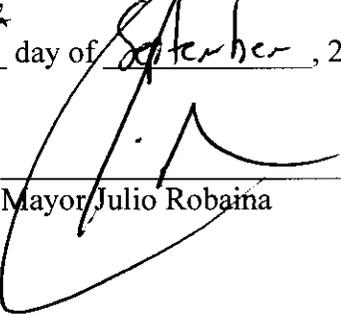
THE FOREGOING ORDINANCE  
OF THE CITY OF HIALEAH WAS  
PUBLISHED IN ACCORDANCE  
WITH THE PROVISIONS OF  
FLORIDA STATUTE 166.041  
PRIOR TO FINAL READING.

Attest:

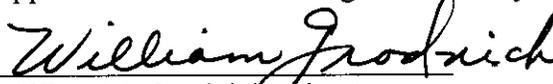
  
Rafael E. Granado, City Clerk

  
Carlos Hernandez  
Council President

Approved on this 10<sup>th</sup> day of September, 2009.

  
Mayor Julio Robaina

Approved as to form and legal sufficiency:

  
William M. Grodnick, City Attorney

~~Strikethrough~~ indicates deletion. Underline indicates addition.

This is corrected Ordinance 09-64. A scrivener's error was reported at the City Council meeting of December 8, 2009.

Ordinance was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Hernandez, Yedra voting "Yes" and Councilmember Gonzalez absent.